Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Mr. Charlesworth submitted there had been an abuse of the process of the Court in that a suit which does not come within 459(i) of the Code, had been brought by way of Summary Procedure.

I must first decide whether section 597 gives me power to set aside the decree in this case. That section is exactly the same as section 151 of the Indian Civil Procedure Code.

There are many decided Indian cases which lay down that section 151 of the Indian Civil Procedure Code cannot be invoked when there is express provision applicable to the particular case — see for instance *Mohamed Manjural Haque v. Bissesswar Banerjee*[1]. It should be noted that in India, by O. 37 R. 4 of the Rules made under the Indian Civil Procedure Code, there is specific power to set aside a decree passed in a Summary Procedure suit. No such specific power exists in our local Civil Procedure Code.

The Indian Civil Procedure Code is not exhaustive, there are cases which are not provided for in it, and therefore the Court, in such cases, can act under section 151 of that Code to do real and substantial justice for the administration of which it alone exists — see *Bhagat Singh v. Jugbir Sawhney*[2].

Following those Indian decisions I decide that I have power under section 597 to set aside the decree passed in this suit, and I also decide that it is necessary for the ends of justice that it should be set aside.

Accordingly I order that the decree passed on the 8th of February, 1949, be set aside, and I make the following necessary and additional orders, also under section 597 :—

(a) That the words "Summary Procedure" at the head of the plaint be deleted, and also the signatures of the attorney of the plaintiff firm and their Solicitors to that heading.

(b) That this suit be treated as a non-Summary Procedure suit, and that the defendant do have 7 days from the date of this judgment i.e. 7 days from the 22nd of February, 1949, in which to enter an appearance. The summons for directions and all other steps necessary for the conduct of the suit to follow in the ordinary course.

As regards costs — since the plaintiff was at fault in bringing this suit as a Summary Procedure suit and the defendant was at fault in not applying for leave to defend in time, I make no order as to costs of this Motion.

Order accordingly.

GAN BOON PUAK & ANOR. v. LIM THYE HIAN

[A. C. J. (Laville J.) February 26, 1949]

[Johore Bahru — Civil Appeal No. 1 of 1949]

Landlord and Tenant — Increase of Rent (Restriction) Enactment, Johore, 1939 — Control of Rent Ordinance, 1948 — Effect of repeal on acquired rights — Effect of notice to quit — Interpretation and General Clauses Ordinance, 1948.

In this case the respondent had given a notice to quit to the appellant expiring on the 30th of September 1947, alleging that the premises were required for his own use. Subsequent to the notice, the Control of Rent Ordinance came into force. It was argued for the appellant that he became a Statutory tenant under s. 15 of the Control of Rent Ordinance, 1948, in that he held over since the date of the expiry of the notice and was still in possession and that in order to terminate his tenancy he must be served with notice to quit again as provided for by s. 16 of the Control of Rent Ordinance in regard to Statutory tenants.

Held: (1) the effect of the notice to quit in this case was that the tenant holding over became a trespasser, with the proviso that except in circumstances falling within s. 8 of the Increase of Rent (Restriction) Enactment, 1939, no action could be taken to eject him without an order of the Rent Board; (2) the repeal of the Increase of Rent (Restriction) Enactment did not affect its previous operation or abrogate anything properly done thereunder, and therefore the notice to quit duly given for the purpose of that Enactment remained a good notice even after that Enactment was repealed; (3) as in this case the landlord had proved that he required the premises for his own use and had determined the tenancy according to law, the provisions of s. 13(f)(i) of the Control of Rent Ordinance were satisfied and this prevented the ex-tenant from becoming a statutory tenant by holding over.

CIVIL APPEAL.

A. J. Braga for the 1st appellant.

A. N. Mitra for the respondent.

Laville J. : — It is agreed that in 1942 1st defendant was a tenant of the Administratrix of the estate of Lim Thye Leong, deceased, on a monthly tenancy at $50 per month.

It is not disputed by 1st defendant that plaintiff succeeded the Administratrix as Administrator in 1947 and that at that date the tenancy of defendant No. 1 was still in existence and continued on the same terms, and that he duly received notice to quit from the plaintiff as successor to the Administratrix on 13th August 1947 determining the tenancy on 30th September 1947; but his claim is that such notice to quit did not determine his tenancy according to law.

At the hearing defendant No. 1 agreed that if the tenancy was determined according to law he had no defence against the plaintiff's claim. He argued that this notice was given before the Control of Rent Ordinance No. 6/48 was in force and is not available

under that Ordinance, and that therefore he became a statutory tenant under section 15 of the Ordinance as soon as the Ordinance came into force in that he had held over since the date of the expiry of the notice and was still in possession, and that in order to terminate his tenancy he must be served with notice to quit again as provided for by section 16 of the Control of Rent Ordinance No. 6/48 in regard to statutory tenants.

The learned District Judge found that the tenancy had been determined according to law; that the 1st defendant did not become a statutory tenant at the expiry of the term granted by the notice to quit, i.e. 1st October, 1947, nor on 31st January 1948 when the Control of Rent Ordinance No. 6/48 came into force. He found that to create a statutory tenancy under section 15 of the Ordinance two things were essential: (1) that the tenancy should have been determined and the tenant remain in possession, and (2) that the provisions of the Ordinance should prevent the landlord of such a tenant from obtaining possession, and that in this case, assuming that the 1st defendant was in adverse possession when the Ordinance came into force and remained so thereafter, he could be deprived of possession under the provisions of the Ordinance by action under sections 12 and 13 of the Ordinance by the landlord and could not therefore be a statutory tenant.

On appeal the same arguments were put forward on behalf of the 1st defendant and it was again contended that being in adverse possession at the time the new law came into force he *ipso facto* became a statutory tenant, and a new notice to quit would be required before his tenancy could be legally determined.

In my view this argument is fallacious.

Up to the coming into force of the Control of Rent Ordinance No. 6/48 a tenant holding over after the determination of his tenancy by notice to quit became a trespasser. The Increase of Rent (Restriction) Enactment 1939 and its amendments up to and including the year 1941 were in force and governed such matters. Under that Enactment a hold over of possession did not constitute the tenant a statutory tenant, but left him a trespasser with the proviso that except in circumstances falling within section 8 of the Enactment, no action could be taken to eject him without an order from the Rent Board.

The situation therefore in regard to No. 22, Jalan Ismail, Kluang, on 1st January 1947 was that defendant No. 1, having received due notice to quit and his tenancy having been determined, remained on there as trespasser, and was liable at the hands of the plaintiff to an action under section 8 of the Enactment without the leave of the Rent Board if his claim fell within the provisions of that section, or to his ordinary remedy with the leave of the Rent Board. There was vested in the landlord the legal right to proceed against his tenant for recovery of possession of his premises according to law. Under the provisions of section 13(b) of the Interpretation and General Clauses Ordinance No. 6/48, it is clear that the repeal of the Increase of Rent (Restriction) Enactment 1939 by Ordinance No. 6/48 did not affect its previous operation or abrogate anything properly done thereunder, and therefore a notice to quit duly given for the purpose of that Enactment remains a good notice to quit even after that Enactment was repealed, and the determination of the tenancy of No. 22, Jalan Ismail, Kluang, was valid and remained so and its validity was not affected by any provision of Ordinance No. 6/48.

This notice to quit and the determination of the tenancy thereby in 1947 and the holding over by the ex-tenant provides one of the two conditions laid down under section 15(a), Ordinance No. 6/48 for the creation of a statutory tenancy. But before an ex-tenant can claim to be a statutory tenant it must be shown that his previous landlord's claim to possession is not accompanied by the circumstances laid down in section 13 of the Ordinance.

It is clear from section 15(a) of the Ordinance that it is not intended to abrogate the general legal right of a landlord to give his tenant notice to quit in order to determine his tenancy, nor is there anything to show that the giving of notice to quit is part of the Ordinance. It is a legal right which exists outside the terms of the Ordinance.

In this case it has been proved by acceptable evidence that the landlord required these premises for his own use and had determined the tenancy according to law. The provisions of section 13(f)(i) of the Ordinance are therefore satisfied and prevent the ex-tenant from becoming a statutory tenant by holding over.

I consider that in this case the plaintiff has made out his claim and that defendant No. 1 was not and is not a statutory tenant, and that the ruling of the District Judge is correct. It is agreed that, if this is so, the 1st defendant's case must fail.

The 2nd appellant has withdrawn his appeal and the judgment against him will stand.

The appeal will be dismissed with costs.

Appeal dismissed.